

Before the Securities and Exchange Board of India

CORAM: Dr.T.C. NAIR, WHOLE TIME MEMBER

WTM/TCN/71/IVD/12/06

Against M/s. Kishore R Ajmera, member, Bombay Stock Exchange Limited, having SEBI Registration No.INB01013319.

DATE OF HEARING: 30.06.2006

Appearances:

For noticee: Shri SH Merchant, Advocate,

Shri Prakash Goniya, Advocate

Shri Kishore R Ajmera

Shri Deepak R Ajmera

For SEBI: Shri P K Nagpal, Chief General Manager

Shri Prashant Saini, Manager

Shri Amitesh Kumar, Legal Officer.

ORDER

Under Regulation 13(4) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002

1.0 FACTS

- 1.1 Bombay Stock Exchange (BSE) vide their letter dated July 11, 2001 and subsequent letter dated February 14, 2002 forwarded their Investigation Reports in the scrip of M/s Malvica Engineering Ltd. (MEL) for the period of December 20, 1999 to March 31, 2000 and August 07, 2000 to August 31, 2001 respectively to SEBI. BSE vide its letter dated July 11, 2001 also informed that a fine of Rs.25,000/- each has been imposed inter alia upon four brokers of the exchange for entering into fictitious deals and creating volumes in the scrip of MEL.
- 1.2 M/s Kishore R. Ajmera (hereinafter referred to as the broker), member, BSE having SEBI Regn: INB 01013319 was one among the brokers who had traded in the scrip of MEL and was fined Rs. 25,000/- by BSE for entering into fictitious deals and creating artificial volumes in the scrip of MEL.
- 1.3 After examining the aforesaid investigation reports of BSE, Chairman, Securities and Exchange Board of India (SEBI) vide his order dated August 31, 2002, ordered investigation into the alleged irregularities in the trading in the scrip of MEL for the aforesaid two periods i.e. December 20, 1999 to March 31, 2000 and August 7, 2000 to August 31, 2000 (hereinafter referred to as relevant period).
- 1.4 It is noted from the investigations that MEL had in March 1999 forfeited 37,63,500 shares which were held by the public on account of non-payment of call money. It was also found that MEL reissued 35,14,100 shares in December 1999 to 46 allottees.
- 1.5 It was further found that MEL had itself extended loans to certain individuals to subscribe and get allotment of those reissued shares of MEL and thus had in fact financed the subscription of its own shares. These allottees were M/s Mayekar Investments Pvt. Ltd. (Mayekar), M/s K.P. Investment Consultancy (K.P.), Shri Pankaj A Desai, Shri Dilip A Desai, Ms. Kirtida P Desai (Brother and wife of Shri Pankaj A Desai) and other members of Desai family. It was also found that after the said allotment, some of these entities viz. Mayekar and K.P. and Shri Dilip A Desai, alongwith other allottees indulged in creating the artificial volume in the scrip of MEL at BSE by conducting matched trades among themselves. Shri Pankaj A Desai was the director of Mayekar whereas Ms. Kirtida P Desai, the wife of Shri Pankaj A Desai was the proprietor of K.P.
- 1.6 The investigations further revealed that during August 7, 2000 to August 31, 2000 the price of the scrip touched a high of Rs.11.10 on August 14, 2000 and a low of Rs.5.00 on August 31, 2000. Due to the non genuine trades executed by the

aforesaid entities, the volume of the scrip was increased artificially from 100 shares on August 4, 2000 to 1,19,500 shares on August 7,2000 and 159900 shares on August 08, 2000.

1.7 The investigation further revealed that the volume in MEL was increased substantially in the period from December 1999 to January, 2000 (from 100 shares on December 20, 1999 to 1,50,800 shares on January 7, 2000). The price of the scrip increased from Rs. 8.95 on December 20, 1999 to Rs. 20.15 on January 12, 2000.

1.8 The investigations further found that the broker, during December 20,1999 to March 31, 2000 had bought 66,300 shares and sold 77,700 shares (constituting 5.48% and 6.73%) and during the period August 07,2000 to August 31, 2000 had bought 32500 and sold 20800 shares on behalf of its client M/s Mayekar Investments Private Limited (hereinafter referred to as Mayekar).

The trading details of the broker are as under:

BROKER	GROSS PURCHASE	%
KISHORE AJMERA	63200	5.48
TOTAL	1154100	
BROKER	Gross Sales	%
KISHORE AJMERA	77700	6.73
TOTAL	1154100	

During the above period, the broker had bought 66,300 shares and sold 77,700 shares on behalf of its client Mayekar. During the period August 07, 2000 to August 31,2000 the broker's trading was as under:

Through sub-broker	Client	Gross Purchase	Gross sales
Prakash S & Co.	Mayekar Investments	32500	20800

1.9 Therefore, it was observed during investigation that having executed these large trades by matching of orders in an illiquid scrip like MEL within a short span of time, which resulted in creation of artificial volumes, the broker failed to exercise due skill, care and diligence in the conduct of its business and violated the provisions of clause A(1) (2) (3) and (4) of the Code of Conduct for brokers specified in Schedule II read with Regulation 7 of SEBI (Stock Broker and Sub-Broker) Regulations, 1992.

2.0 Appointment of the Enquiry Officer

2.1 Therefore, vide order dated July 24, 2003, under sub-section 4 of the SEBI Act,1992 read with sub-regulation (1) of Regulation 5 of the Securities and Exchange Board of India an Enquiry Officer was appointed by SEBI under Regulation 5 of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as Enquiry Regulations) to enquire into the affairs of the broker in the matter of alleged manipulation in the scrip of MEL and possible violations of the provisions of Securities and Exchange Board of India Act, 1992, the Securities and Exchange Board of India (Stock Brokers and Sub brokers) Regulations, 1992 (hereinafter referred to as Broker Regulations) by the said broker.

2.2 The Enquiry Officer issued a Show Cause Notice dated October 16/20, 2003 under Regulation 6(1) of the Enquiry Regulations to the broker. The Broker vide their letter dated November 04, 2003 sought additional time of 15 days to submit reply. The broker was advised vide letter no. dated PKB/EO/MEL/21024 dated November 07, 2003 to file its reply latest by November 24, 2003.

2.3 The Broker replied to the said Show Cause Notice vide letter dated November 18, 2003 and submitted interalia the following:

1. That the broker did not derive any monetary gain on account of the rise and/or fall in the price of Malvica Engineering scrip and also there was no intention to do so on its part. The sub-brokers traded through broker in the scrip of Malvica Engineering were genuine transactions for brokerage and hence its role was restricted in this manner.

2. That the transactions in Malvica Engineering scrip were actual deals at prevailing market prices on BOLT system, settlement of which were completed by the BSE as per the rules and regulations at the prevalent time.
3. That its role as a broker was for a limited period and involvement was miniscule in the Malvica Engineering case. Compared to their volume of business, the value of trades in Malvica Engineering scrip was meager.
4. That the broker did these trades to earn only nominal amount of brokerage, which is its main business activity. There was no proprietary trading in Malvica Engineering scrip.
5. That its risk management team interacted with Prakash Shantilal & Co. (hereinafter referred to as P&Co.) and forewarned them in time regarding their dealings in Malvica Engineering scrip. Further P& Co. always met its financial obligations (P&Co. was provided BOLT Terminal since 1999).
6. That its dealings were fair and equitable on the market and within the prescribed exposure limits and margins and other requirements of BSE were met in time. Further, they always met their pay-in-time liabilities in time and have an impeccable track record in this regard.
7. That considering the stock market dynamics and operating realities of the relevant time, it discharged its duties as a stock broker diligently and acted well within its financial capabilities and demonstrated dexterity in its dealings. The broker was neither aware of any specific negative information nor had committed any irregularity knowingly. The scale of their trades and their financial implications were quite miniscule and there was no default by anyone concerned in these trades.
8. That it followed the code of conduct in its letter and spirit and has not violated any substantive provision of law. Allegations against them are factually untrue, bereft of substance/findings and hence are misconceived and untenable in law.
9. That the broker has an excellent and spotless track record of over thirteen years as an intermediary in the securities market.

2.4 The Enquiry Officer granted a personal hearing to the broker as per Regulation 9 of the said regulations on December 30, 2003. Shri Deepak Ajmera, the representative of the broker appeared on the said date but without any authorization letter. Shri Deepak Ajmera requested for deferment of hearing up to January 09, 2004 on the ground that Shri Kishore R Ajmera was out of town. Accordingly, hearing took place on January 09, 2004.

2.3 The Enquiry Officer after considering the findings of the investigation, the oral and written submissions made before him by the broker concluded that the broker has failed to exercise due skill, care and diligence in the conduct of its business as broker as per the provisions of the Code of Conduct for brokers specified in Schedule II read with regulation 7 of Broker Regulations. The enquiry officer submitted his Enquiry Report dated March 16, 2004 recommending a major penalty of suspension of certificate of registration of the broker for a period of four months.

3.0 Show Cause Notice and Reply

3.1 A copy of the said Enquiry Report along with a show cause notice dated March 24, 2004 was issued to the broker under Regulation 13(2) of the Enquiry Regulations informing about the Enquiry Officer's recommendation and advising it to show cause as to why action as may be considered appropriate should not be taken against it.

3.2 The broker vide letter dated 8th April 2004 requested for extension of time. Accordingly the broker submitted its reply vide letter dated 12th April, 2004 and while reiterating most of the submissions made before the Enquiry Officer, inter alia submitted the following:

- a) That the entire transaction in the scrip of MEL was done by one of its sub-broker P & Co. and this sub-broker was not having any dues since its inception
- b) That the broker earned only an insignificant amount of Rs.13,584/-. It was further submitted that the net position was only 1.25% of shares which were short sold through the said broker.
- c) With regard to the relationship between Mayekar and K.P. Securities, the broker submitted that it was not aware of the said relationship and also submitted that this non awareness of relationship was confirmed by Mr. Prakash Shantilal who had filed affidavit dated January 12, 2004 in this regard before the enquiry officer.
- d) That the risk management system was working continuously and because of the volume in this particular scrip being of insignificant quantity there was no suspicion on the part of the broker.
- e) That regarding the margin and the credit balances, it was reiterated that during the period it had sufficient credit balance with it and the fact that there is no outstanding position or un-discharged commitments shows that all

the transactions have been honoured.

- f) further it was submitted by the broker that it had neither failed to exercise the due diligence nor committed any breach of code of conduct or any rules or regulations of SEBI. Any order of suspension passed against it will vitally affect its business as this will stop its entire business and the source of livelihood.
- g) The broker also requested for a personal hearing

3.3 As requested by the broker an opportunity of personal hearing was granted to it before me on June 30, 2006 when Shri S H Merchant, Advocate, Shri Prakash Gorniya, Shri Kishore K Ajmera and Shri Deepak R Ajmera were present and made submissions.

4.0 Consideration of the Issues and Findings

4.1 I have carefully examined the facts and circumstances of the case, investigation reports, the Enquiry Report and other material on record. A group of connected clients and sub-brokers and brokers indulged in manipulation in the scrip of MEL and the broker Kishore R Ajmera was a part of this group. The group contributed to major portion of the total volume in the scrip in the market. Such pattern of trading cannot be done without the active participation and knowledge of the brokers. I have also considered the oral as well as written submissions made by the broker including the written Submissions of the broker filed after the personal hearing before me.

4.2 I note that BSE being a self regulatory organization and first level regulator had, through its in-house surveillance system, noticed these very dubious trades executed by certain entities through its members (brokers) and after examining the role played by them in such trades issued show cause notices. BSE found that M/s. Kishore R. Ajmera the broker herein, by indulging in these fictitious trades which created artificial volumes, had violated Bye-laws nos. 355 (a) and 357(ii) of the BSE Bye-laws. Bye-law no. 357 of BSE provides as under:

Bye-law-357 : " A member shall be deemed guilty of unbusinesslike conduct for any of the following or similar acts are omissions namely –

(ii) if he makes a fictitious transaction or gives an order for the purchase or the sale of the securities the execution of which would involve no change of ownership or executes such order with knowledge of its character ; "

and imposed a fine of Rs. 25,000/- upon broker M/s Kishore R Ajmera.

4.3 I also note that Shri Pankaj A Desai the director of Mayekar, one of the client for which the broker had executed the trades, in his statement dated October 01, 2002 made before SEBI, admitted that his companies namely Mayekar and K.P. Investments were appearing on both sides of the transactions and thus created artificial volumes.

4.4 As regards the submission that all the trades were done by the sub-broker, I wish to state that this can not be an excuse to avoid action and can not preclude SEBI from taking any action against the broker as long as it is established that all the dubious trades in question were executed through the broker. Broker being a member of the exchange carries with it more responsibility and is expected to be more careful and diligent in its dealings. Broker is a professional and it is its duty to ensure that no manipulation takes place by the trading conducted through it. Further, in case the registration of the broker is cancelled or suspended, the registration of its sub-brokers also gets cancelled or suspended automatically and the sub-broker also faces the disciplinary action. So the contention of the broker that the entire transaction was done by one of the sub-brokers on its own, it had neither purchased nor sold in its account any of the shares of MEL, is untenable.

4.5 As regards the alleged association of the clients who conducted non-genuine trades and created artificial volumes in MEL, I find from the facts as set out herein above that all these clients were allotted the forfeited shares by MEL and some of them were even financed by MEL for the said subscription, is an ample proof of their association. From the joint statement of the broker and sub-broker dated May 29, 2002 it is ample clear that the broker was aware of the relationship of the clients i.e. Mayekar, its director Shri Pankaj A Desai, and that KP Securities was owned by his daughter-in-law Mrs KP Desai. As recorded hereinabove, these were the persons who were financed and allotted the forfeited shares of MEL and who all indulged in non-genuine trades in MEL. Further I agree with the finding of the Enquiry that the denial of awareness of the joint statement made by the broker and the sub-broker is not convincing in the absence of any supporting evidence.

4.6 As regards the submission of the broker that net position of the broker is only 1.25%, I find from the Enquiry Report that the broker has consistently transacted on behalf its client Mayekar and its related entities right from December 1999 till August 2000 and that the major trading of the scrip at the broker's office was attributed solely to the trading by Mayekar and its related entities. Hence, in totality of the facts and circumstances of the case, I do not find any reason to disagree with this findings of the Enquiry Officer with regard to the trading of the sub-broker through the broker.

4.7 I note the contention of the broker regarding the risk management system that as the volumes in the scrip of MEL were low, the risk management system did not bring to light the activities of sub-broker and its client. In this regard, I am of the view that even a little amount of due diligence, would have been able to caution the broker about the activity of the sub-broker. Further, the fact that even the sophisticated risk management system put forth by the broker could not have been able to throw out the alerts, raise questions about the facts as to whether such a system had indeed been in place during the period under scrutiny. The brokers being professionals must keep a watch on the trading pattern of their clients and sub-brokers and market trends to ensure that no manipulative activities are carried out through their terminals. In view of this , I, in full agreement with the Enquiry Officer, hold that the broker has failed to act with due diligence, skill and care and thus has violated the mandate of Broker Regulations.

4.8 In the light of the foregoing discussion, I do not find any substance in the arguments of the broker and am of the view that the broker has failed to put forth any plausible defence in its favour. Hence I do not find any reason to defer with the findings and recommendations of the Enquiry Officer and hold that the broker, while indulging the trades in question for the related entities who while trading among themselves, created artificial volumes in the scrip of MEL has failed to exercise due diligence, care and skill in violation of clauses A(1), A(2), A(3) & A(4) of Code of Conduct for brokers specified in Schedule II read with Regulation 7 of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992. Therefore it is appropriate to take disciplinary action against the said broker to protect the interest of the investors and the integrity of the securities market.

5.0 ORDER

5.1 Now, therefore in exercise of the powers conferred upon me under Section 19 of SEBI Act, 1992 read with Regulation 13 (4) of the SEBI (Procedure for Holding Enquiry by Enquiry Officer and imposing penalty) Regulations, 2002, I hereby suspend the registration of M/s. Kishore R Ajmera member, Bombay Stock Exchange Limited, having SEBI Registration No.INB01013319, for a period of four months.

5.2 This order shall come into force after 21 days from the date of this order.

DATE: 27-12-2006

PLACE: MUMBAI

T.C. NAIR

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA